NO. 20233

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMIE MERL MASON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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I

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States District Court for the Southern District of California, adjudging appellant to be guilty as charged in a one-count indictment, following trial without a jury. [R. T. 37]. [1/]

The offenses occurred in the Southern District of California. The District Court had jurisdiction by virtue of Title 18, United States Code, Sections 1407 and 3231. Jurisdiction of this Court rests pursuant to Title 28, United States Code, Sections

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[1/] "R. T. refers to the Reporter's Transcript of Proceedings.

1291 and 1294.

II

STATEMENT OF THE CASE

Appellant was charged in a one-count indictment returned by the Federal Grand Jury for the Southern District of California, Southern Division. It was charged that appellant, being a citizen of the United States who was then addicted to and a user of narcotic drugs, entered the United States at the port of Tecate, California, without registering with a Customs official, agent, or employee at said point of entry as required by law, and without surrendering the certificate required by law to be obtained by said appellant upon leaving the United States. The charge was brought under Title 18, United States Code, Section 1407. [C. T. 2]. [2]

Appellant entered a not guilty plea on July 6, 1964. [R. T. 5]. His motion to dismiss the indictment was denied. [C. T. 27]. Trial by jury was waived. [R. T. 25-26]. Court trial commenced on September 22, 1964, before United States District Judge James M. Carter. [R. T. 27]. Appellant was found guilty as charged on November 9, 1964. [R. T. 36].

Thereafter, on December 7, 1964, appellant was committed to the custody of the Attorney General for three years, execution

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[2] "C. T." refers to the Clerk's Transcript.

of the sentence was suspended, and he was placed on probation for five years. [C. T. 37]. Appellant subsequently filed notice of appeal. [C. T. 46].

III

ERROR SPECIFIED

Appellant's opening brief (pp. 3-4) specifies the following points upon appeal:

"1. The District Court erred in failing to dismiss the indictment.

"2. The statute under which appellant was indicted, tried and sentenced, to-wit, Title 18, U. S. C., Section 1407, is unconstitutional in whole or in part when applied to appellant." [3]

IV

STATEMENT OF THE FACTS

It was stipulated that on or about April 21, 1964 (the date alleged in the indictment), appellant returned to and entered into the United States from Mexico at the port of Tecate, California, within the Southern Division of the Southern District of California, without registering with a Customs official, agent or employee at said point of entry and without surrendering the certificate

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[3] A more convenient summary of appellant's argument appears p. i, containing the topic headings of the argument.

mentioned in Section 1407 of Title 18, United States Code. [R. T. 29].

It was stipulated that appellant was a citizen of the United States at the time in question and that he entered Mexico from the United States several days before April 21, 1964, had several "fixes" in Mexico, and returned to the United States on April 21, 1964. [R. T. 27-28].

It also was stipulated that appellant would testify that he was a user of narcotics in 1961, served six months in a county jail, was released, and did not use narcotics until on or about April 21, when he had two "fixes" and then crossed the border. [R. T. 28-29].

Testimony taken during a hearing in another case, the case of Sharon Jean Weissman, 4/ was received in evidence. [R. T. 30].

The latter testimony included the following:

Assistant District Attorney Claude B. Brown, San Diego County, testified that he had handled cases involving persons who had been apprehended at the international border and subsequently committed under California Penal Code Section 6500. He did not know whether these persons had registered at the border. [R. T. 48, 49]. He testified that the cases referred to his office involved state arrests for being under the influence of narcotics or for possession of narcotic paraphernalia. [R. T. 50]. He also

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4/ Presently on appeal to this Court (No. 19974), with oral argument having been heard on October 11, 1965, in Los Angeles.

testified that "since the Van Zantin case we have had very few who have been referred from the border." [5] [R. T. 50].

San Diego Deputy City Attorney William Rathje testified that he had authorized criminal complaints in cases arising at the international border at San Ysidro, but he did not know whether these cases resulted from registration under Section 1407. [R. T. 64-65].

Officer Robert L. Dodge of the San Diego Police testified that he had participated in narcotics cases which originated at the international boundary at San Ysidro, some of which involved persons who had registered under Section 1407. He testified that he received a monthly list of persons who had registered. He also testified that arrests were made only when there was reasonable cause to believe that the persons to be arrested were under the influence of narcotics at the time of the arrest. [R. T. 60, 62].

Attorney William O. Ward III testified that he had represented one Federal defendant against whom evidence had been offered concerning her registration under Title 18, Section 1407, upon another occasion. He believed that he had unsuccessfully objected upon the ground that the registration exhibit violated the Fifth Amendment to the Constitution of the United States. [R. T. 54-56].

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[5] In Van Zanten v. Superior Court, 214 Cal. App. 2d 510 (1963), it was held that an alleged narcotics addict could not be committed in San Diego County under Section 6500 of the California Penal Code where the alleged addict was a resident of another county.

V

ARGUMENT

A. Section 1407 of Title 18, United States Code, Is Not Unconstitutionally Vague.

Title 18, United States Code, Section 1407, requires registration by any international traveler who is a citizen of the United States and falls within one of the following classifications:

1. One who is addicted to narcotic drugs.
2. One who uses narcotic drugs.
3. One who has been previously convicted of certain violations.

Appellant was charged as an addict and user but not as a previously convicted violator. He contends that the term, "uses," is unconstitutionally vague. Appellee submits that "uses" is a clear, simple term.

This is not a case of first impression. In Palma v. United States, 261 F.2d 93 (5th Cir. 1958), the defendant was charged under the same statute, Section 1407, with failing to register, being a citizen "who is addicted to and uses narcotic drugs. . . ." (at p. 94). He contended that the statute and regulations pursuant thereto did "fail to define a proper standard of guilt by being vague and indefinite . . ." (footnote at pp. 94-95).

It is clear from the appellant's brief in Palma, supra, that he raised the question of alleged vagueness of the addict and

user terms in that appeal. [6] The court rejected appellant's contention.

In considering the validity of Section 1407, it should be noted that there is a "strong presumption of constitutionality due to an act of Congress . . . ."

United States v. Di Re, 332 U.S. 581, at 585 (1948) (Emphasis added).

The Supreme Court has been extremely reluctant to strike down Congressional legislation during the modern era. Professor Bernard Schwartz wrote in 1957:

> "In the twenty years since 1937, the Court has declared invalid only three federal statutes, and not one of these three laws was a legislative measure of great significance."

"The Supreme Court", Professor Bernard Schwartz, The Ronald Press Company, New York, 1957, p. 26.

The Supreme Court, Professor Schwartz noted, "is now controlled by the conviction that it is an awesome thing to strike down an act of the elected representatives of the people, and that its power to do so should not be exercised save where the occasion is clear beyond fair debate." (Id. p. 23).

The term "uses," compares favorably with other statutory language which has been upheld by the United States Supreme

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[6] Reference may be made to appellate briefs for the purpose of determining whether a particular issue was raised upon appeal, e.g., Murphy v. Waterfront Comm'n, 378 U.S. 52, at 65-66 (1964); Karrell v. United States, 247 F.2d 706, at 709-10 (9th Cir. 1957).

Court when attacked upon the ground of unconstitutional vagueness.

A notable example is the phrase, "obscene, lewd, lascivious, filthy, indecent, or disgusting," the meaning of which could be the subject for almost endless debate. The Supreme Court held that these words are sufficiently definite.

Winters v. New York, 333 U.S. 507 (1948).

The phrase, "reasonable allowance for salaries," was held to be sufficiently definite in a prosecution for evading payment of income taxes.

United States v. Ragen, 314 U.S. 512 (1942).

A statute prohibiting "the unreasonable waste of natural gas" in an oil and gas field was held to be sufficiently definite.

Bandini Co. v. Superior Court, 284 U.S. 8 (1931).

Statutes prohibiting contracts and arrangements "reasonably calculated" to fix and regulate the prices of commodities, and prohibiting acts which "tend" to accomplish certain results, are sufficiently definite.

Waters-Pierce Oil Co. v. Texas, 212 U.S. 86 (1909).

The word, "offensive," would seem to vary in meaning according to the sensibilities and temperament of the listener, but a statute prohibiting "offensive" words to another in a public place was held to be sufficiently definite in Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

A requirement "to do all in one's power" does not specify whether one must relentlessly devote all of his daily energy to

the goal, but it was held sufficiently definite in Miller v. Strahl, 239 U.S. 426 (1915).

Although no precise boundaries were set, a statute prohibiting the building of fires in or "near" inflammable material upon the public domain was held to be sufficiently definite.

United States v. Alford, 274 U.S. 264 (1927).

A statute referring to one who "uses" narcotic drugs is exceptionally clear and definite in comparison with the predecessor of Section 242 of Title 18, United States Code, which prohibited acts depriving any person "of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States." The quoted statute was held to be sufficiently definite for the facts of the case then before the court.

Williams v. United States, 341 U.S. 97 (1951).

That statute would include the phrase, "due process of law," which involves "no hard and fast rule," [7/] and it also would include the Fourth Amendment and its "quagmire of 'searches and seizures.'" [8/] Nevertheless, the statute was upheld.

The term, "moral turpitude," a potent subject for considerable legal, theological, and philosophical discussion, also has been held to be sufficiently definite.

Jordan v. De George, 341 U.S. 223 (1951).

[7/] Brock v. North Carolina, 344 U.S. 424, at 427 (1953).

[8/] Davis v. United States, 327 F.2d 301, at 302 (9th Cir. 1964).

A statute prohibiting contracts and combinations unduly restricting competition or unduly obstructing the course of trade also was held to be sufficiently definite.

Nash v. United States, 229 U. S. 373 (1913).

In Jordan v. De George, supra, 341 U. S. 223, the Supreme Court faced the question whether the term, "moral turpitude," was unconstitutionally vague. The Court found that the term compared favorably with other statutory terms and phrases which had been unsuccessfully attacked in the Supreme Court, including the following (footnote at p. 231):

> " 'connected with or related to the national defense,' Gorin v. United States, 312 U. S. 19 (1941); 'psychopathic personality,' Minnesota v. Probate Court, 309 U. S. 270 (1940); 'wilfully overvalues any security,' Kay v. United States, 303 U. S. 1 (1938); 'fair and open competition,' Old Dearborn Co. v. Seagram Corp., 299 U. S. 183 (1936); 'reasonable variations shall be permitted,' United States v. Shreveport Grain & Elevator Co., 287 U. S. 77 (1932) . . . ."

Appellant's claim of vagueness in the term, "who . . . uses narcotic drugs," appears to be based solely upon the question posed in his brief (p. 9): "Does one use qualify, or must two or more uses be established in order to require registration." Appellee submits that one use is sufficient, unless occurring in

the distant past. Had Congress intended that more than one use was necessary, it would have been simple to say so. The statute would then contain the words, "no citizen of the United States who is addicted to or uses narcotic drugs more than once. . . ."

The Supreme Court has stated:

> "We have several times held that difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness. United States v. Wurzbach, 280 U.S. 396, 399 (1930). Impossible standards of specificity are not required. United States v. Petrillo, 332 U.S. 1 (1947)."
>
> Jordan v. De George, supra, 341 U.S. 223, at 231.

This Court has held:

> "The fact that in some cases it may be difficult to determine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense."
>
> Turf Center, Inc. v. United States,
> 325 F.2d 793, at 795 (9th Cir. 1963).

If Section 1407 is vague, which is not conceded, the remedy would be a construction of the statute in a reasonable

manner, rather than striking part of it from the books. 9/

United States v. Harriss, 347 U. S. 612, at 623 (1954).

Appellant suggests that the term, "habitual," be added to the word, "uses," to provide a more definite meaning. Here again Congress could have added language to the statute had it wished to do so. The statute might then read, "no citizen of the United States who is addicted to or uses narcotic drugs habitually . . . ." However, an "addict" is defined, to appellant's satisfaction (Appellant's Opening Brief, p. 9), as "one who is addicted to a habit. . . .," one "who habitually uses any habit-forming narcotic drugs. . . ," etc.

United States v. Eramdjian, 155 F. Supp. 914, at 930 (S. D. Cal. 1957).

The above-quoted language contains excerpts from Judge Carter's definition of "addict" and is not complete, but enough has been quoted to point to the apparent redundancy in appellant's suggestion that "uses" be interpreted as "habitually uses," which would mean that the definitions of "addicted to" and "uses" would blend into each other until the one could not be distinguished from the other. They would have nearly identical meanings. The practical result would be the non-legislative repeal of the "uses" portion of the statute.

9/ Appellant attacked only the "addicted" and "uses" portions of Section 1407 in the trial court, conceding that the prior conviction portion was constitutional. [R. T. 7-8].

Such a construction would seriously impair the effectiveness of the statute and limit its practical effect to previously convicted violators and those who have reached the most extreme and degraded depths of narcotics addiction. However, it has been held that in construing a statute to avoid constitutional doubts, courts "must also avoid a construction that would seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate."

United States v. Harriss, supra.

It is respectfully submitted that the decision of the Circuit Court of Appeals in Palma v. United States, 261 F.2d 93 (5th Cir. 1958), and the strong presumption of constitutionality of an act of Congress, should prevail over appellant's claim of unconstitutional vagueness of Section 1407.

B. Section 1407 of Title 18, United States Code, Does Not Violate The Privilege Against Self-Incrimination.

Appellant contends that the registration requirement of Section 1407 violates the constitutional privilege against self-incrimination.

This question has been decided adversely to appellant's position by this Court.

Reyes v. United States, 258 F.2d 774, at 778-782 (9th Cir. 1958).

Other courts have reached the same result upon the same question.

Palma v. United States, supra, at 95;

United States v. Eramdjian, supra, at 925-29.

Appellant's self-incrimination argument is based solely upon the proposition that a registrant would tend to incriminate himself under Section 11721 of the California Health and Safety Code. Under Section 11721 it is a crime to use narcotics or be under the influence of narcotics in California. It is not a California crime to be a user of narcotics.

Thus a registrant does not admit commission of a California crime. He merely states that he is an addict, user, or previously convicted violator. It is not a California crime to have the status of an addict, user, or previously convicted violator. A traveler cannot be convicted in California of use of narcotics if the use occurred in Mexico, nor can he be convicted where there is no evidence of venue. A registrant under Section 1407 need not state where or when he used narcotics. It is conceivable that he might register while refusing to reveal whether he is a user, addict, or previously convicted violator.

Appellee's position upon this issue is based upon each of the following contentions:

1. Registration involves no admission of guilt under Section 11721 of the California Health and Safety Code.

2. Assuming, arguendo, that registration under Section

1407 involves a self-incriminatory statement, the objection should be made by submitting the form and announcing a refusal to register, under the Fifth Amendment.

3. Assuming, arguendo, that registration under Section 1407 involves a self-incriminatory statement in relation to Section 11721, the objection should be made at the time of state prosecution, if any occurs, not by silently evading registration under Section 1407.

As previously noted, a registrant does not admit commission of a state crime merely by registering as an addict or user. The use may have occurred elsewhere. Appellant states: "The registration of a user or addict could conceivably establish the prima facie case for a violation of Section 11721." (Appellant's Opening Brief, p. 23). However, there is no prima facie case without proof of venue. In what county is the defendant to be prosecuted? Is it conceivable that any prosecutor would file a charge of use of narcotics without any proof of venue? The presumption is that official action is regularly performed.

Shepherd v. United States, 217 F. 2d 942, at 946 (9th Cir. 1954).

It also is presumed that the law has been obeyed.

"Jury Instructions and Forms For Federal Criminal Cases," Hon. William C. Mathes, 1961, p. 51. A prosecutor would not be obeying the law by deliberately instituting a frivolous charge.

Venue must be proved in a California criminal prosecution.

People v. Megladdery, 40 Cal. App. 2d 748,
at 762-64 (1940);
People v. Parks, 44 Cal. 105 (1872).

The United States Supreme Court has approved the English view that the self-incrimination privilege does not apply to a risk of prosecution where that risk is " 'a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.' " The risk of a California prosecution with no proof of venue is such an "imaginary and unsubstantial" danger.

Appellant states, however, that registration might provide a "link in the chain" for state prosecution, apparently because evidence of registration might be offered in some future prosecution upon a separate charge. This small risk attaches to all types of documents involving entries by the public. One is required to sign an income tax return, although the signature might be a "link in the chain" in some hypothetical future forgery trial. Income tax returns are admissible in evidence against those who sign the returns, even though they are upon trial upon charges involving alleged crimes not concerned with the income tax.

Stillman v. United States, 177 F. 2d 607, at 617
(9th Cir. 1949).

It is questionable whether the "link in the chain" rule extends to the keeping of records required by law. For example, Shapiro v. United States, 335 U.S. 1 (1947), a criminal prosecution,

the Government allegedly obtained leads against the petitioner from written records required to be kept by the petitioner under a regulation pursuant to the Price Control Act. The petitioner asserted that the self-incrimination privilege applied. The Circuit Court of Appeals ruled that the records were public documents, as to which no constitutional privilege against self-incrimination attached. This judgment was affirmed by the Supreme Court, which held (at p. 7) that "Congress required records to be kept as a means of enforcing the statute and did not intend to frustrate the use of those records for enforcement action by granting an immunity bonus to individuals compelled to disclose their required records to the Administrator." (Emphasis added).

The Supreme Court stated (at p. 22) that the very purpose of the record-keeping requirement was "to ensure that violations of the statute should not go unpunished. . . ." Although there was a strong possibility that the required records would be offered in evidence in the event of a criminal prosecution, rather than a remote possibility as in the instant case, the Supreme Court ruled that there was no violation of the Fifth Amendment.

A similar result was reached by the Supreme Court in United States v. Hoffman, 335 U.S. 77 (1948).

Appellant cites Blau v. United States, 340 U.S. 159 (1950), in support of his "link in the chain" argument. However, in Blau the petitioner "reasonably could fear that criminal charges might be brought against her" if she made certain admissions before the Grand Jury (at p. 161). Such a fear by a Section 1407 registrant

would not be reasonable.

An additional difficulty in appellant's position is the fact that this Court adopted Judge Carter's view that one who fails to register cannot later claim the privilege against self-incrimination. Reyes v. United States, supra, at 780-82. Appellant contends that if he had exercised his possible option of affirmatively claiming the privilege at the time that he entered the United States, "He would be forced to put the authorities on notice that he was then a user or addict."

However, this would not render Section 1407 unconstitutional. As this Court noted in Russell v. United States, 306 F.2d 402, at 409 (9th Cir. 1962), a person may be required to make an income tax return, even though answers are privileged under the Fifth Amendment. He may raise the objection in the return. This also would tend to put authorities on notice that a law has been violated, as in Reyes, supra, and as in the instant case.

In Russell, supra, this Court held that the firearm registration requirement of 26 U.S.C.A. 5841 was unconstitutional because registration admitted possession, and "proof of possession establishes prima facie, a violation of that section." (at p. 411). Under another statute, proof of possession was " 'deemed sufficient evidence to authorize conviction unless the defendant explains such possession to the satisfaction of the jury.' " Russell, supra, footnote at pp. 407-08. As appellant notes in his brief (at p. 21), ". . . Russell could make no report under Section 5841 without admitting an actual or presumptive violation of the statute." A

Section 1407 registrant does not face such cavalier treatment by the statutes.

Appellant states that the basis for the decision in United States v. Eramdjian, 155 F. Supp. 914 (S. D. Cal. 1957), has been weakened by a Supreme Court decision overruling the Murdock rule (284 U. S. 141), upon which the Eramdjian decision relied. However, Judge Carter's scholarly opinion in Eramdjian listed five separate reasons for rejecting the claim that Section 1407 violates the self-incrimination privilege (Eramdjian, supra, at pp. 925-28). Any one of these was sufficient to support Judge Carter's conclusion upon the Fifth Amendment question. This Court adopted all five.

Reyes v. United States, supra, at pp. 780-82.

Only one of these five arguments was affected by the recent Supreme Court action overruling Murdock, supra.

Assuming, arguendo, that a Section 1407 registration involves a self-incriminatory statement in relation to Section 11721, and also assuming, for purposes of argument only, that the registrant would not be required to make the objection at the time and place designated for registration, there is no reason to consider Section 1407 to be partially unconstitutional, because the registrant would have a complete remedy at the time that the evidence was offered during the theoretical state prosecution, if it ever occurred. Then the evidence would be excluded, and there would be no violation of Constitutional rights.

In regard to this point, appellant states that Section 1407

violates the Fifth Amendment and that "*The obvious solution* is for Congress to enact a statute *allowing the prospective registrant immunity against state prosecution* based upon such registration; until such a law is passed, however, the only suitable protection against self-incrimination is to strike down any indictment for failure to register as a user or addict of narcotics." (Appellant's Opening Brief, pp. 24-25, emphasis added). However, if Section 1407 does involve self-incriminatory statements, the immunity advocated by appellant already exists, by judicial decision rather than by statute:

> "Indeed, a witness does not need any statute to protect him from the *use* of self-incriminating testimony he is compelled to give over his objection. *The Fifth Amendment takes care of that without a statute.*"

Adams v. *Maryland*, 347 U.S. 179, at 181 (1954) (emphasis added), cited with approval in *Murphy* v. *Waterfront Comm'n.*, 378 U.S. 52, at 75 (1964).

In *Murphy*, *supra*, the question was "whether one jurisdiction within our federal structure may compel a witness, whom it has immunized from prosecution under its laws, to give testimony which might then be used to convict him of a crime against another such jurisdiction."

Murphy, *supra*, at p. 53.

The Supreme Court held that such testimony may be

compelled. (at p. 79). However, the compelled statements may not be admitted into evidence against the witness in a later criminal trial. (at p. 76). Murphy involved testimony compelled by the state. The Supreme Court ruled (at p. 79) that "the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him."

If the state may compel such testimony because the witness has a non-statutory guarantee against use of the evidence against him by the Federal government, is the rule the same where the Federal government compels the statement (i. e., registration under Section 1407) and the state desires to use it in evidence at a later trial (i. e., a hypothetical California prosecution under Section 11721)?

It is clear from the opinion in Murphy, supported by the above-quoted reasoning in Adams v. Maryland, supra, that the privilege exists at the time of the subsequent criminal proceeding, should such a proceeding occur.

As the Supreme Court held in Malloy v. Hogan, 378 U. S. 1, at 11 (1964):

> "It would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in a state or federal court. Therefore, the same standards must determine whether an accused's silence in either a federal

or state proceeding is justified."

Consequently, appellant already has a complete protection against use of Section 1407 statements against him in a hypothetical state prosecution, in the unlikely event that use of such statements would violate his constitutional rights. Therefore, this is an additional reason for rejecting appellant's effort to strike down an act of the elected representatives of the people. It is respectfully submitted that the "strong presumption of constitutionality" (Di Re, supra, at 585) should prevail.

C. Section 1407 of Title 18, United States Code, Does Not Violate the Right to Travel.

The mere requirement of registration does not violate the right to travel.

Reyes v. United States, supra, at 778, 782, 783.

" 'The right to travel is not an absolute one, free of all restraint or regulation.' "

Reyes, supra, footnote at 783, quoting United States v. Eramdjian, supra, at 929.

D. Section 1407 of Title 18, United States Code, Does Not Involve Cruel and Unusual Punishment.

The registration requirement of Section 1407 does not

involve a cruel and unusual punishment. It is a reasonable and slight regulation of the right to travel. Registration by a traveler is accomplished with far greater ease than the completion of an income tax return, which also may be involuntary but could hardly be characterized as a cruel and unusual punishment.

Appellant cites Robinson v. California, 370 U.S. 660 (1962). Robinson held that addicts could not be criminally punished for the alleged offense of being addicted, which is a status rather than an act. In the same opinion it was noted (at pp. 664-65) that a state might lawfully confine narcotic addicts for treatment and impose penal sanctions for failure to comply with the procedures. If confinement of addicts does not constitute a cruel and unusual punishment, neither does the requirement of Section 1407 ordering addicts to register if they choose to engage in international travel.

VI

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Phillip W. Johnson
PHILLIP W. JOHNSON